Supreme Court, U.S.
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No. 99-3526

In The
Supreme Court of the United States

Roccine Taylor,

Petitioner(s)

v.

William J. Henderson,
In his official capacity as
Postmaster General for the
United States,

On Petition for Writ of Certiorari
TO THE UNITED STATES COURT OF APPEALS
For the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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Petitioner, *Pro Se*

47pp

QUESTIONS PRESENTED

1. "Whether § 717 of the Civil Rights Act of 1964 as amended provides the exclusive judicial remedy for claims of discrimination in federal employment."

2. "Whether the Appeal Court erred by upholding the district Court judgment dismissing Taylor's Constitutional and intentional tort claims for failure to state. A claim upon which relief can be granted."

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on June 20, 2000. Rehearing was denied on September 7, 2000.

OPINIONS BELOW

The decision of the Court of Appeals (App.1) is unreported. The opinion of the district court (App.5) is unreported. Judgment and Findings of the Merit System Protection Board (MSPB) (App.12).

JURISDICTION

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1). The judgment of the court of appeals (App.1) was entered on June 20, 2000. Rehearing was denied on September 7, 2000 (App4).

RULES INVOLVED:

This case involves the following federal rules of Civil Procedure, which provides: RULE 8(a)(2).

(a) A pleading, which sets forth a claim for relief, whether an original action, counterclaim, cross-claim, or third-party claim, shall contain…

(2) A short and plain statement of the claim showing that the pleader is entitled to relief.

RULE 52 FINDINGS BY THE COURT; JUDGMENT ON PARTIAL FINGINGS:

(a) Effect. In all actions tried upon the facts without jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon. ...Judgment entered pursuant to rule 58; ... Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.

(b) Amendment: ...when findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may be later questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

(a) Judgment on Partial Findings. ...A trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without favorable finding on the issue...Such

a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

RULE 11(b) Representation to Court (b)(1)(3)(4)

(b) By presenting to the court (whether by signing, filing, submitting or later advocating) a pleading, written motion, or other paper, an attorney or unrepresentative party is certifying that to the best of the person's knowledge, information, and belief, formed after a inquiry reasonable under the circumstance.

(1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so, identified, are reasonably based on a lack of information or belief.

STATEMENT OF THE CASE AND FACTS

Taylor is an African-American Female who is employed by the United States Postal Service (USPS). Taylor a career employee for seven years at the time of the action was suspended for six months. After six months of uncertainty, she was fired from her job with the USPS. The suspension and termination was for the same reasons; alleged threatening behavior of her daughter and herself. [1]Taylor was fired on January 13, 1996. Taylor was in the privacy of her home when she was notified of the placement on Indefinite Suspension without pay, until further notice. No reason was given.

January 15, 1996, Taylor received a letter via certified mail stating that she was being placed on "Emergency Indefinite-suspension, no-duty, no-pay status" for threats made by her daughter. January 16, 1996, Taylor took the letter to the office of the American Postal Workers Union (APWU). The representative informed Taylor that the letter was illegal and that they would get back with her. On January 17, 1996, Taylor received a third notice informing her of "Emergency Indefinite-suspension, no duty, no-pay status," alleging that Taylor threaten a supervisor. The notice was void of prescribed information, no name, time, or location was given.

Two days later, a postal inspector interviewed Taylor. On March 18, 1996, Taylor received a copy of the "Investigative Memorandum" prepared by the postal inspector. May 11, 1996, Taylor received a letter proposing the removal. Taylor, immediately contacted James O'Block, he told her to wait until notified. June 12, O'Block told her to meet him at the Administrative Building as soon as possible. The meeting lasted approximately 10 minutes. June 14, 1996, Taylor received the "Decision of Removal".

Taylor filed two complaints with the Merit System Protection Board (MSPB). The two complaints were joined. The hearing for both complaints was held on October 22, 1996. The Administrative Law Judge (ALJ) reversed the suspension and upholding the removal action. Taylor filed a timely appeal. On June 19, 1997, MSPB issued a judgment reversing both suspension and termination deciding the actions were unwarranted. Taylor was awarded back pay with interest and other benefits due. Rejecting her claim of retaliatory discrimination, intentional infliction of emotional distress, mental distress and other claims (App.20).

On August 18, 1997, Taylor filed a timely complaint in the United States District Court. A civil suit seeking relief for the intentional violation of the USPS. Taylor alleged that the USPS retaliated against her for filing a discrimination complaint and improperly removed her from her postal position, in violation of federally protected rights as a preference eligible veteran, violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e-16 (c), the Federal Tort Claims Acts, 28 U.S.C.§ 1346(b), and the Fifth Amendment and Fourteen Amendments to the United States Constitution (App.22).

June 11, 1998 and June 22, 1998, Magistrate Judge Jack B. Streepy issued a Report and Recommendation that the USPS's motion for partial dismissal and motion for summary judgment was granted. United States District Judge Donald C. Nugent adopted the Report and Recommendations and dismissed all Taylor's following causes of action: (1) "Denied Due Process", (2) "Denied Rights As a Preference Eligible Veteran", (3) "Denied Rights Under The Collective Bargaining Agreement", (4) "United States Constitution 5thth Amendment", (5) "United States Constitution 14thth Amendment", (6) "Denied all Procedural Rights", (7) "Prohibited Personnel Practices", (8) "Discriminatory

Retaliatory Discrimination", (9) "Defamation, Libel, Slander", (10) "Tort of Outrageous Reckless Disregard", (11) "Intentional Infliction of Emotional Distress", (12) "Negligent Infliction of Emotional Distress", (13) "Mental Distress", (14) "Outrageous Conduct", and (15) "Mental Distress".

On February 3, 1999, U.S. Magistrate Judge Jack B. Streepy issued a final Report and Recommendation dismissing Taylor's remaining claims. U.S. District Judge Donald C. Nugent then adopted the final Report and Recommendation on March 31, 1999. Taylor subsequently filed a timely notice of appeal to the United States Court of Appeal Sixth Circuit. June 20, 2000, Appeals Court issued an order affirming the district court's decision. Taylor filed a timely petition for review with the Appeal Court. On September 7, 2000, the court issue and order confirming their decision stating that "Taylor has not cited any misapprehension of law or fact" that would alter their prior decision.

The Sixth Circuit erred in adopting the findings of the district court contrary to the Controlling Law discussed in Chandler v. Roudebush, 425 U.S. 840 (1976).

Nothing in the legislative history indicates that the federal sector "civil action" was to have the chameleon-like character, providing fragmentary *de novo* consideration of discrimination claims where "appropriate," ibid, and otherwise providing record review. On the contrary, the options, which Congress considered, were entirely straightforward. I faced a choice between record review of agency action based on traditional appellate standards and trial *de* novo to include those of private-sector employees, and the Senate's decision to treat private- and public sector employees alike in this respect was ratified by Congress as a whole. ibid.

REASON FOR GRANTING THE WRIT

The important of the legal doctrine of precedent (stare *decisis*), which rests on the presumption that justice, requires that persons in similar circumstances be treated similarly under the law. The Sixth circuit in this case has entered a decision in conflict with the decision of the United States Supreme Court of Appeals on the same important matter and has sanctioned such a departure by a district court, as to call for an exercise of this Court's supervisory power.

THE ISSUE OF TRIAL *DE NOVO*

The case of Chander v. Roudebush, 425 U.S. 840 (1976) arguably eradicated the conflict among the circuits concerning the nature of the judicial proceeding provided by §717(c). Subsequently, at least four other courts of appeals have held that 5 U.S.C. § 7501, 717© gives federal employees the right to a trial de novo in the district court. See, Abrams v. Johnson, 534 F.2d 1226 (CA6); Caro v. Shultz, 521 F.2d 1084 (CA7); Hackley v. Roudebush, 171 U.S. App. D.C. 376, 520 F.2d 108; Sperling v. United States, 515 F.2d 465 (CA3).

"Substantial Evidence" review cannot over come the clear import of the statutory language and the legislative history. The Congress was aware of the fact that federal employees would have the benefit of "appropriate procedures for an impartial [agency] adjudication of the complaint." And yet chose to give employees who had been through those procedures the right to file a *de novo* (App.3). "civil action" equivalent to that to that enjoyed by private sector employees.

The administrative disposition of federal employee discrimination complaints as an adequate basis for "substantial evidence" is inappropriate due to the fact that the system creates built-in conflict of interest. Chandler v. Roudebush, 425 U.S. 840 n.39, 96 S.Ct. 1949, 48 L.Ed.2d 416 (1976).

In Abrams v. Johnson, 534 F.2d 1228 (1976) the court held that the district court has discretion to admit the prior record (their arbitral) and give weight to the prior decision. But as we understand trial de novo, admission of an administrative record by no means precludes the taking of additional evidence or even rehearing the testimony of key witnesses. (App. 4). [2]

ISSUE OF DISMISSAL

In, Mertik v. Blalock, 983 F.2d 1353, 1356 (6th Cir. 1993) (citing Dugan v. Brooks, 818 F.2d 513, 516 (6thth Cir. 1987)). On a Fed. R. Civ. P. 12(b)(6) motion, all of the allegations contained in plaintiff's complaint are accepted as true, and the complaint is construed liberally in favor of the party opposing the motion. (App. 13)

In, Scheuer v. Rodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, the Supreme Court explained: "When a federal court reviews the sufficiency of a complaint before the reception of any evidence...its task is necessarily a limited one. The issue is not whether the plaintiff is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test".

It is not the function of the court to weigh evidence or evaluate the credibility of witnesses. "Instead, the court should deny the motion unless it is clear that the plaintiff can prove no set of facts in support of her claim that would entitle her to relief. See, Camerson v. Seitz, 38 F.3d 264, 270 (6th Cir. 1994).

The Sixth Circuit in this case erroneously dismissed Taylor's claims for failure to state a claim upon which relief can be granted (App.3). Federal notice pleading requires only that the plaintiff "set out in her complaint a short and plain statement of the claim that will provide the that will provide the defendant with fair notice of the claim. To survive a motion to dismiss a sec. 1983 action plaintiff must allege facts, which show that the defendant acting under color of state law, intentionally and unlawfully deprived the plaintiff of a constitutional right. (cited omitted). The Court has repeatedly stated that the "short and plain statement of the claim in Rule 8(a)(2) meant what is said." See, Conley v. Gibson, 355 U.S. 41, 47 (1957), Leatherman v. Tarrant County, 507 U.S. 163, 168 (1993)

As to Counts Two and Seven, where Plaintiff alleges that she was denied certain procedural and substantive rights as a preference eligible postal employee, the Magistrate Judge Jack B. Streepy decided that because Taylor was reinstated to her former position and awarded back pay with interest and benefit due her claim of "intentional infliction of emotional distress, mental distress, victim of outrageous conduct, and deprivation of federally protected property rights should be dismissed.

On March 16, 1996, the USPS issued the following statement to the MSPB as part of "Agency's Motion To Dismiss – Board Lacks Jurisdiction",

The agency chose to cancel the emergency placement action and thus, have appellant remain on the clock but off the job. " (JA, 6th Cir. Appeal, pg37).

"Discrimination" is, generally, failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored. Taylor claims that USPS violated Title VII of the Civil Rights Act, 42 USC, Section e)(2), which reads in pertinent parts as follows:

(a) It shall be an unlawful employment practice for an employer.

(1) To fail or refuse to hire or to discharge any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; or

(2) To limit, segregate, or classify his employees or applicants for employment in any way, which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, religion, sex, or origin. Section 704 (a) of the Civil Rights Act provides as follows:

"It shall be unlawful for an employer to discriminate against any employee... because such individual, has made a charge...or participated in any manner in an investigation, proceeding or litigation under [this Act]."

Sections 1981 and 1983 of the Civil Rights Act of 1866 also encompasses claims of discrimination in retaliation for an employee's actions to enforce rights under this law. USPS knew that Taylor had filed several complaints with the EEOC; they knew Taylor had been denied due process by placement on emergency indefinite suspension without pay for more than 14 days and subjected to adverse employment action. USPS and APWU met together to conspire on how to deprive Taylor of her due process rights. (APWU informed USPS that the first notification was illegal informing them that the "charge of making a threat had to come from Taylor, not her adult daughter," Therefore, USPS issued a second letter alleging, "Taylor had made a threat. Count three of Taylor's complaint states that she was denied certain rights under a collective bargaining agreement The Magistrate Judge cited Allis-Chalmers Corp v. Lueck, 471 U.S. 202, 219 (1985); Kaiser v. United States Postal Service, 908 F.2d 47, 47 (6thth Cir. 1990) stating that to successfully bring a claim pursuant to a collective bargaining agreement, an individual must exhaust the grievance and arbitration procedures. Taylor's statement in her initial complaint item #71 indicates that she approached the union only later to realize they were working with the agency officials.

The union never took a statement from Taylor nor did they initiate a step one-step two-step three grievance. Taylor was forced to wait more than 14 days in order to file with MSPB.

In Board of Regents of State College v. Roth, 408 U.S. 564, the Supreme Court discussed in a number of cases what equals a protectable interest. In Roth, the court held the protected property interest must be found in some law outside of the constitutional due process guarantees, which creates more than a unilateral expectation of a benefit. The external law must create a legitimate claim of entitlement. Id.at 577.

Due process is defined as "the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to fair hearing before a tribunal with the power to decide the case." (Black 's Law Dictionary, Seventh Ed.)

The Veterans' Preference Act authorizes Civil Service Commission appeals from adverse agency decision. See, 5 USC § 7701. The act itself applies only to veterans of military service, 5 USC §§ 2108, 7511 [5 USC §§ 2108, 7511], but Executive Order No. 11441, printed in note following 5 USC § 7301 [5 USCS § 7301], extends the Act's protection to all non-preference eligible employees in the classified service. A federal employee in the competitive service, is entitled by statue to serve in his job without fear of dismissal except for cause, must be given evidentiary hearing before she is discharged. *Id.*

Covered employees, such as Taylor, are entitled to certain statutory protections including 30 days advance written notice, a reasonable time to answer, orally and in writing, the reasons given by the agency for the adverse action, and written decision and the specific reasons therefore at the earliest practicable date. 5 USC § 7511(a)(1)(West 1996). When there are factual disputes that pertain to the validity of a deprivation, due process "require[s] more than a simple opportunity to argue or deny". See, Cleveland Board of Education v. Loudermill, 470 U.S. 532, 552 (1985) (App.3).

The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' Mathews v. Eldridge, 424 U.S. 319, 333 (1976) quoting, Armstrong v. Manzo 380 U.S. 545, 552, (1965). The Court has upheld procedures

affording less than a full evidentiary hearing if "some kind of a hearing" ensuring an effective "initial check against mistaken decision" is provided before the deprivation occurs, and a prompt opportunity for a complete administrative and judicial review is available. Loudermill, supra, at 542, 545, quoting Roth, supra at 569-570.

Courts have previously acknowledged the "severity of depriving a person of the means of livelihood." Id. at 543. "While a fired worker may find employment elsewhere doing so will take some time and is likely to be burdened by the questionable circumstances under which he left his previous job."

In light of the injurious effect, a retaliatory discharge can have on an employee's financial status and prospects for alternative interim employment; the employee's substantial interest in retaining her job must be considered. In, Loudermill, the Court considered the temporary deprivation of a state government employee's right not to be discharged without cause, indication that the employee was entitled to "oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story" before the temporary discharge took effect.

THE HEARING PROCEDURE

Despite congressional criticism that agency's responsibility for investigating and judging complaints lodged against it produces an appearance of unfairness, and that the system creates a built in conflict of interest, the head of an agency may still reject a complaint under certain circumstances or cancel a complaint for "failure to prosecute," and the provisions under which the defendant agency preliminarily investigates the charges are not modified in any relevant way.

The hearing procedures are only cosmetically altered, with the "hearing examiner" now denominated a "complaint examiner" but with the practical limitations on his independence and the fact that ultimate decision making authority rests with the agency head persisting under the revised procedures. The examiner need no legal training, and no rules of evidence govern the hearing; hearsay is explicitly rendered admissible and examiners are informed that the concept of "burden of proof" has no applicability to the hearing process.

Moreover, the complaint examiner delineates the issues, and he rather than the complainant molds the agency record. And particularly important in evaluating the credibility of the agency proceedings as adequate fact-finding mechanisms, the examiner has no subpoena power and thus neither the complainant not the examiner has the right to conduct discovery or secure compulsory process. Indeed, the CSC has frankly recognized that, "The hearing process is an adjunct to the investigation. It is not and adversary Proceeding but is an administrative proceeding designed to provided additional Evidence." Office of the Federal Equal Employment Opportunity of the Civil Service Commission, Discrimination Complaints Examiners Handbook, 5 (April 1973) (emphasis in original).

Furthermore, the head of the employing agency still makes the final decision on the complaint. Therefore, the CSC has not lived up to §717 and has not implemented procedures that meet congressional concerns, the CSC's non adversarial fact-finding procedures and inherent structural defects persist essentially unchanged, and do not guarantee federal employee's a full and fair hearing on their claims of employment discrimination[1]. Hackley v. Roudebush, supra, 171 U.S. App. D.C. 376, 520 F.2d at 137-41.

DISMISSAL OF CONSTITUTIONAL AND INTENTIONAL TORT CLAIM

The Ohio Supreme Court recognized the tort of intentional infliction of emotional distress. Yeager v. Local Union 20, Teamsters, Chauffeurs, Warehousemen & Helpers of America, 6 Ohio St. 3d, 369, 453 N.E.2d 666 (1983). In Yeager, the court articulated the requirements for a successful claim, saying that "one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm, "Id. at 671." Thus in order to state a claim for intentional infliction of emotional distress in Ohio, a plaintiff must allege that (1) defendants intended to cause emotional distress, or knew or should have known that their actions would result in plaintiff's serious emotional distress, (2) defendants conduct was extreme and outrageous, (3) defendants' actions proximately caused plaintiff's emotional injury, and (4) plaintiff suffered serious emotional anguish. (R, #1).

The upreme Court has recognized the difficulty a plaintiff has in proving discriminatory motive by direct evidence. See, Burdine, 450 U.S. at 256, 101 S.Ct. at 1095. Intent ordinarily may not be proved directly because there is no way of fathoming or scrutizing the operation of the human mind. A person intent maybe infer from surrounding circumstances, consideration to any statement made or act done or omitted by a party whose intent is in issue, and all other factors and circumstances which indicate his or its state of mind.

DAMAGES

Under the terms of the Civil Rights Act of 1991 (1991 Act), 105 Stat. 1071. Punitive damages are available in

claims under Title VII of the Civil Rights Act of 1964 (Title VII), 78 Stat. 253, as amended, 42 U.S.C. § 2000e *et seq.* Punitive damages are limited, however, to cases in which the employer has engaged in intentional discrimination and has done so "with malice or with reckless indifference to the federally protected rights of an aggrieved individual." Rev. Stat. § 1977, as amended, 42 U.S.C. § 1981a(b)(1).

Prior to 991, only equitable relief, primarily back pay, was available to prevailing Title VII plaintiffs; the statue provided no authority for an award of punitive or compensatory damages. See, Landgraf v. USI Film Products, 511 U.S. 244, 252-253 (1994). With the passage of the 1991 Act, Congress provided for additional remedies, including punitive damages, for certain classes of Title VII and ADA violations. The 1991 Act limits compensory and punitive damages awards, however, to cases of "intentional discrimination"-that is, case that do not rely on the disparate impact" theory of discrimination 42 U.S.C. §1981a(a)(1). The Act further qualifies the availability of punitive awards:

> "A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or *with malice or with reckless indifference to the federally protected rights of an aggrieved individual."* (Emphasis added) The term "malice" that it may be acting in violation of federal law, not awareness that it is engaging in discrimination. The Court gains an

understanding of the meaning of the terms "malice" and "reckless indifference," as used in §1981a, from this Court's decision in Smith v. Wade, 461 U.S. 30 (1983). Furthermore, concluding that the terms "malice " and "reckless" ultimately focus on the actor's state of mind. See, e.g., Black's Law Dictionary 956-957, 1270 (6th ed, 1984) (defining "willful," wanton," and "reckless").

A suit for damages is the only effective remedy. Taylor prays to recover damages for loss of reputation, mental anguish, emotional stress, and anxiety caused to her by USPS conduct; (1) "Negligence" is the failure to exercise the standard of care that a reasonable prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, (2) "Negligent Infliction of Emotional Distress" is a tort of causing another severe emotional distress through one's negligent conduct, (3) "Intentional Infliction of Emotional Distress" is a tort of intentionally or recklessly causing another person severe emotional distress through one's extreme or outrageous acts, (4) "Recklessly" is characterized by the creation of a substantial and unjustifiable risk of harm to another and by conscious and/ or deliberate disregard for or indifference to that risk. Reckless conduct is much more than mere negligence; it is the state of mind in which a person does not

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Footnote[1] Deborah Noe, white female manager of Lyndurst, Mayfield Branch and official head of that insulation. Taylor filed several EEOC against Noe, alleging discrimination, creating hostile work environment and subsequently adverse personnel action. Noe was the decision maker and prosecutor. "No man shall be a judge in his own cause," Bonham's case, 8 CO 114a, 118a, 77 Eng. Rep. 641, 652 (1610).

care about the consequences of his action, (5) "Outrageous Conduct" is conduct so extreme that it exceeds all reasonable bounds of human decency, (6) "Emotion Distress" is highly unpleasant mental reaction (such as anguish, grief, embarrassment, anger, humiliation, shame, worry or nausea) that results from another person's conduct. The intensity and duration of the distress are factors to be considered in determining its severity, and a defendant's conduct is in itself important evidence that the distress has existed.

In addition to damages mention, if the law permits under certain circumstances, an award to injured person punitive damages in order to punish a defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

CONCLUSION

It is therefore respectfully submitted that the petition for writ of certiorari should be granted.

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APPENDIX

No. 99-3526
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROCCINE TAYLOR,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	ORDER
	)	
WILLIAM J. HENDERSON, in his official capacity as Postmaster General for the United States,	)	
	)	
Defendant-Appellee.	)	
	)	

Before: KRUPANSKY, NORRIS, and SUHRHEIENRICH, Circuit Judges.

Roccine Taylor appeals pro se from a district court judgment that dismissed her civil rights action, filed under diverse theories of state and federal law. Her appeal has been referred to a panel of this court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, the panel unanimously agrees that oral argument is not needed in this case. Fed. R. App. P. 34(a).

Taylor is an African-American who is employed by the United States Postal Service ("USPS"). She was suspended and later terminated based on the alleged threatening behavior of her daughter and herself. The Merit Systems Protection Board ultimately reversed Taylor's suspension and termination, even though t rejected her claims of retaliatory discrimination.

Taylor listed the following claims in her civil rights complaint: (1) "Denied Due Process"; (2) "Denied Rights As a Preference Eligible Veteran"; (3) "Denied Rights Under The Collective Bargaining Agreement"; (4) United States Constitution 5th Amendment"; (5) "United States Constitution 14th Amendment"' (6) "Denied All Procedural Rights"; (7) "Prohibited Personnel Policies"; (8) "Discriminatory Retaliation"; (9) "Defamation, Libel, Slander"; (10) "Tort of Outrage Reckless Disregard"; (11) "Intentional Infliction Of Emotional Distress"; (12) "Negligent Infliction of Emotional Distress"; (13) "Mental Distress"; (14) "Outrageous Conduct"; and (15) "Mental Distress."

A magistrate judge initially recommended that Taylor's first, fourth, fifth and ninth through fifteenth claims be dismissed. In a second report, he recommended that the defendant be awarded summary judgment on Taylor's eighth claim. The district court adopted these recommendations on July 7, 1998, and dismissed Taylor's first, fourth, fifth, and eighth through fifteenth claims. The magistrate judge then issued a third report, in which he recommended the dismissal of Taylor's remaining claims. The court adopted this report and finally dismissed the case on April 1, 1999.

Taylor's brief does not contain any effective challenge to the district court's rationale for dismissing her second, third, sixth, seventh, and eighth claims. Thus, she has abandoned these claims for purposes of appellate review. See Kocsis v. Multi-Care Mgmt., 97 F.3d 876, 881 (6th Cir.1996). Nevertheless, we note that the dismissal of Taylor's eighth claim was proper, as she did not show that the reasons asserted for the defendant's actions were merely a pretext for discrimination.

See Wixson v. Dowagiac Nursing Home, 87 F.3d 164, 169-71 (6th Cir.1996).

Taylor forfeited her remaining claims by not filing any objections to the magistrate judge's first report, which indicated that they were not cognizable in a federal civil rights action. See Miller v. Currie, 50 F.3d 373,380 (6th Cir. 1995). We note, nonetheless, that all of Taylor's remaining federal claims were properly dismissed because the Civil Service Reform Act provides a comprehensive scheme for addressing them. See Jones v. Tennessee Valley Auth., 948 F.2d 258, 263-64 (6th Cir. 1991). Thus, the district court acted within its discretion by dismissing any claim that Taylor may have had under state tort law. See United Mine workers of Am.v. Gibbs, 383 U.S. 715, 726 (1966).

Taylor now argues that the defendant violated her right to equal protection because Ohio Rev. Code§2745.01 impermissibly limits the liability of employers who are sued for intentional torts by their employees. However, Taylor did not raise this claim in her civil rights complaint, and we will not reach it for the first time on appeal. See Barker v. Shalala, 40 F.3d. 789, 793-94 (6th Cir. 1994).

We have reviewed Taylor's remaining arguments, and they are all lacking in merit. Accordingly, the district court's judgment is affirmed. Rule 34(j)(2)(C). Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
/s/ LEONARD GREEN, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OR OHIO
EASTERN DIVISION

ROCCINE TAYLOR,	) CASE NO.
	) 1:97CV1884
Plaintiff,	)
	)
v.	) JUDGE DONALD
	) C. NUGENT
WILLIAM J. HENDERSON,	)
[1]Postmaster General	) MEMORANDUM
	) OPINION
	) AND ORDER
Defendant.	)
	) DATE:March 31,1999

This matter comes before the Court upon the Report and Recommendation of a Magistrate Judge of this Court submitted on February 3, 1999 (Document #43) which recommends that Defendant's Motion to Dismiss (Document #42) and Motions to Amend Complaint (Document #32, #33) be denied. For the reasons that follow, the named Report is herby ADOPTED by this Court, along with the findings of fact and conclusions of law therein.

Plaintiff Roccine Taylor filed this pro se action on July 18, 1997, alleging violations of within Complaint. Title VII of the Civil Rights Act of 1964,

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[2] William J. Henderson replaced Marvin T. Runyon as Postmaster General subsequent to the filing of this lawsuit.

42 U.S.C. §§2000e-16(c), the Federal Tort Claims Act, 28 U.S.C. §1346(b), and the Fifth and Fourteenth Amendments to the United States Constitution. Plaintiff alleged that Marvin T. Runyon[2], in his capacity as Postmaster General for the United States, wrongfully suspended and removed her from her position as a postal clerk and that he retaliated against her for filing an EEOC complaint.

Defendant filed a Motion for Partial Dismissal (Document #14) on December 24, 1997 and a Motion for Summary Judgment (Document # 21) on March 6, 1998. The Court referred this matter to Magistrate judge Jack B. Streepy for the preparation of a Report and Recommendation as to these motions. On June 11, 1998, Magistrate Judge Streepy issued a Report and Recommendation recommending that Defendant's Motion for Partial Dismissal be granted (Document #29). Thereafter, on June 22, 1998, Magistrate Judge Streepy issued a second Report and Recommendation (Document #30) recommending that Defendant's Motion for Summary Judgment is granted. This Court adopted the Magistrate Judge's Reports on July 6, 1998. Consequently, Counts One, Four, Five, Nine, Ten, Dleven, Twelve, Thirteen, Fourteen, and Fifteen of Plaintiff's Complaint have been dismissed; and summary judgment has been granted as to Cont Eight.

On September 11, 1998, Defendant filed a Motion to Dismiss Plaintiff's Remaining Claims (Document #41). These claims include the following" (1) Count Two-"Denied Rights as a Preference Eligible Veteran"; (2) Count Three-"Denied Rights Under the Collective Bargaining Agreement"; (3) Count Six-"Denied all Procedural Rights"; and (4) Count Seven-"Prohibited Personnel Practices."

Subsequently, Plaintiff filed a Counter Motion for Summary Judgment (Document #42)

on September 14, 1998. On February 3, 199, Magistrate Judge Streepy issued a Report and Recommendation recommending that Defendant's Motion to Dismiss be granted and that Plaintiff's counter Motion for Summary Judgment and her Motions to amend the Complaint be denied. Plaintiff filed Objections to the Report and Recommendation of the Magistrate Judge, along with Plaintiff's Objections/Motion to Amend Complaint, are herein reviewed by the Court.

Factual Background

The following factual summary is based upon depositions, affidavits, and exhibits filed in this case as well as the review of the facts in the prior Reports and Recommendations of Magistrate Judge Streepy. Those material facts, which are controverted and supported by deposition testimony, affidavit, or other evidence, are stated in the light most favorable to Plaintiff, the Non-moving party.

Plaintiff initiated an informal discrimination complaint against the United States Postal Service (hereinafter "USPS") with the Equal Employment Opportunity Commission (hereinafter "EEOC") on September 26, 1995. The complaint consisted of alleged conflicts Plaintiff had with her supervisor, Ms. Deborah Noe. Thereafter, on December 18, 1995, the EEOC filed a formal discrimination complaint against the USPS.

Following certain alleged threatening comments made by Plaintiff's daughter to USPS employees, the USPS sent Plaintiff a notice suspending her without pay pending the outcome of and investigation. That notice

was rescinded and superseded the next day by and amended notice-suspending Plaintiff without pay pending an investigation of reports that Plaintiff had boasted about her daughter's alleged threats and that Plaintiff had personally threatened her supervisor.

The USPS conducted a comprehensive investigation of the above allegations, corroborating the charges indicated in the amended notice to Plaintiff. As such, a notice was sent to Plaintiff of a proposal to remove her from the USPS for conduct unbecoming to a postal worker and for threatening harm to postal employees. On June 8, 1996, the USPS sent Plaintiff a "letter of decision" stating that it found the charges against her "fully supported by the evidence." Accordingly, Plaintiff was removed effective June 14, 1996.

Plaintiff appealed the decision of the USPS. The Administrative Law Judge (hereinafter "ALJ's decision regarding . Plaintiff's removal, finding that the USPS had failed to present adequate evidence at the hearing. The MSPB ordered the USPS to cancel Plaintiff's suspension, effective January 3, 1996, and to reinstate her, effective June 14, 1996. Plaintiff was also awarded back pay with interest and benefits due.

Standard of Review for Magistrate Judge's Report and Recommendation

The applicable district court standard of review for a magistrate judge's Report and Recommendation depends upon whether objections were made to that report. When timely objections are made to a Report and Recommendation of a magistrate judge, the district court

report. When timely objections are made to a Report and Recommendation of a magistrate judge, the district court reviews the case de novo. FED.R.CIV.P.72(b) provides this standard of review. It states, in pertinent part, the following:

> The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Accordingly, this Court will review the Report and Recommendation, to which timely objections have been filed, de novo. See Dacas nursing Support Systems, Inc v. N.L.R.B.,7F.3d 511 (6th Cir. 1993).

Conclusion

The Court had reviewed the Report and Recommendation of the instant *cade de nove*. The Court had also considered all of the pleadings, affidavits, motions, and filings of the parties. The Court herby adopts the findings of fact and conclusions of law of the Magistrate Judge as its own.

Concerning Defendant's Motion to Dismiss Plaintiff's remaining claims, Magistrate Judge Streepy correctly determined that Plaintiff fails to state a claim upon which relief can be granted as to all remaining .

counts. As such, Defendant's Motion to Dismiss should be granted. As to Counts Two and Seven, wherein Plaintiff alleges that she was denied certain procedural and substantive rights as a preference eligible postal employee, Plaintiff cannot state a claim as a matter of law. Exhibit 13 of Plaintiff's Complaint demonstrates that the MSPB found in Plaintiff's favor, reinstating her to her former position and awarding her back pay with interest and benefits due. Therefore, as a result of this favorable decision if the MSPB, Plaintiff cannot show that she suffered a denial of this favorable decision of the MSPB, Plaintiff cannot show that she suffered a denial of her procedural or substantive rights. Accordingly, Counts Two and Seven are dismissed

Count Three of Plaintiff's Complaint states that Plaintiff was denied certain rights under a collective bargaining agreement. In order to successfully bring a claim pursuant to a collective bargaining agreement, an individual must exhausted the necessary grievances procedures. Therefore, Plaintiff fails to state a claim upon which relief can be granted as to Count Three of her Complaint; and it is accordingly dismissed.

Finally, Plaintiff alleges in Count Seven of her complaint that her removal by the USPS was a "prohibited personnel practice" in violation of 6U.S.C. § 2302 (b)(4), (b)(8)(A), (b)(9), and (b)(10). However, the USPS is exempt from the above statutory provision. According to section 2302, "personnel action" as that word is defined," and the definition of "agency" in section 2302(a)(2)(C) does no include the United States Postal Service. Booker v. Merit Systems Protection Board, 982 F.2d 715, 519 (Fed. Cir. 1992). According, Plaintiff fails to state a claim upon which relief can be granted. Defendant's Motion to Dismiss as to Count Seven is granted.

With regards to plaintiff's "Counter Motion for Summary Judgment," this Court finds such motion without the merit. Plaintiff fails to articulate an argument, or

counts contained in her Complaint. Likewise, any allegations contained within her motion do not address issues contained within Defendant's Motion to Dismiss.

Moreover, Plaintiff's Objection s/Motion to Amend Complaint fail to provide this Court with any basis upon which to reject the Magistrate Judge's Report and Recommendation

Finally, concerning Plaintiff 's apparent Motions to Amend Complaint, filed also as Objections to the Report and Recommendations of June 11, 1998 and June 22, 1998, Magistrate Judge Streepy stated that such motions were implicitly denied when this Court adopted the above Reports and Recommendations; and assuming there had not been a ruling, the motions should be denied. On July 2, 1998, this Court denied Plaintiff's Motion to Amend the Complaint. Therefore, Magistrate Judge Streepy was correct in recommending that the Court deny the above.

DATED: March 31, 1999

/s/ DONALD C. NUGENT
DONALD C. NUGENT

United States District Judge

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

ROCCINE TAYLOR, Appellant,	DOCKETNUMBERS CH-0752-960267-I-I CH-0752-96-0740-I-I
v.	
UNITED STATES POSTAL SERVICE, Agency,	DATE: June 19 1997

Roccine Taylor, Garfield Heights, Ohio, pro se
Michael K. Brown, Esquire, Cincinnati, Ohio, for the agency,

BEFORE

Ben L, Erdreich, Chairman
Beth S. Slavet, Vice Chair
Antonio C. Amador, Member
Member Amador issues a dissenting opinion.

OPINION AND ORDER

The appellant petitions for review of the November 21,1996 initial decision in these joined appeals that reversed her suspension and affirmed her removal. For the reasons set forth below, we GRANT the petition for review, REVERSE the portion of the initial decision that affirmed the removal, and AFFIRM the remaining portions of the initial decision; the appellant's removal is REVERSED.

BACKGROUND

The agency placed the appellant on "emergency" suspension from her Distribution Clerk position because it believed that the appellant and her daughter had threatened agency employees. The appellant, who is a preference-eligible, filed a timely pro se appeal. See Initial Appeal File (IAF) ('0267), Tab 1 at 7, 8. The agency later removed the appellant for threatening to harm an agency employee (based on the same alleged incident that led to the suspension), and the appellant filed a timely appeal from that action. See IAF ('0740), Tab 1. The administrative judge joined the two appeals. Id., Tab 3.

The agency did not file the materials required by the acknowledgment order issued in the removal appeal, which would have included the adverse action file, nor did it respond to the appellant's motion for sanctions or the administrative judge's "Second Order to Respond." See IAF ('0740), Tabs 2, 5, 6. Accordingly, the administrative judge imposed the sanction of "deny[ing] the agency the right to introduce additional evidence supporting its case-in-chief against the appellant." Id., Tab 10. After a hearing, the administrative judge reversed the suspension on the ground that the agency effected it without following statutorily-prescribed procedures, and found the appellant's claims of race discrimination, sex discrimination, and reprisal for filing discrimination complaints not proven. Notwithstanding the sanction imposed on the agency, however, the administrative judge, relying in part on evidence introduced jointly at the hearing, found that the agency proved that the appellant made a threat, and affirmed the removal. IAF ('0740), Tab 15.

The appellant argues in her timely petition for review and timely supplements thereto that the agency did not prove that she made a threat. [1] She also argues that: The administrative judge's findings relative to the suspension are incorrect; the agency committed harmful procedural error when it removed her; she should have been afforded interim relief; and the agency discriminated against her. Petition for Review File, Tabs 1, 3, 5. The agency has not responded to the appellant's submissions.

ANALYSIS

The agency did not prove that the appellant made a threatening statement; accordingly, her removal is reversed.

On January 11, 1996, the appellant's daughter telephoned John Bradfield, a supervisor at the agency, to complain about the way Chris Cooper, another supervisor, was treating her mother. Bradfield informed an agency official that the appellant's daughter had threatened to harm Cooper during that conversation. The agency later came to believe that on January 12, 1996, the appellant said she would "shoot John Bradfield" if her daughter "got into trouble." The agency removed the appellant on charges of "Conduct Unbecoming a Postal Employee" and "Threatening Harm to Postal Employee, " both of which were based on the appellant's alleged threat. See IAF ('0740), Tab 1 at 7-8.

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[1] The appellant has made three submissions on review, all of which were filed prior to the deadline for filing a petition for review.

The agency bears the burden if proving its charge by a perponderance of the evidence. 5 U.S.C § 7701 (C) (1) (B); 5 C.F.R. § 1201.56 (a) (1) (ii). As noted above, the administrative judge precluded the agency from introducing evidence in support of its case beyond that which had already been submitted as of the date that he imposed sanctions, yet he convened a hearing notwithstanding the appellant's motion for default and then he went on to sustain the charge. This was error, as explained below.

The appellant called Barbara Shirley, Supervisor of Customer Services, as a witness. Shirley testified that she was looking for the appellant between noon and 1:00 p.m. on January 12, 1996 when she heard the appellant and Clyde Brown, Custodian, talking in the utility room. Hearing Tape (HT) 1 A. Shirley testified that the appellant "was discussing with Mr. Brown what her daughter had did, uh, told Mr. Bradfield and that, uh, he was, she was going to shoot Chris Cooper." HT 1B. When asked what else she overheard, Shirley testified: "I didn't hear anything else [be]cause that's when I interrupted." Id. Shirley further testified that a few minutes later, Brown told her that the appellant had said that "if anything happens to her daughter that she's going to shoot Mr. Bradfield." Id.

The appellant admitted that she talked with Brown in the utility room, but denied making the statement about shooting Bradfield. HT 2A.

The appellant gave direct testimony about her conversation with Brown, whereas Shirley's Testimony was hearsay, that is, Shirley testified to what Brown told her the appellant said. See Fed. R. Evid. 801 (c) (defining "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted"). The administrative judge noted that direct testimony is normally

given more weight than hearsay, but he then went on to conclude that Shirley's hearsay testimony was more persuasive than the appellant's direct testimony under the circumstances. Cf. Reniere v. Department of Agriculture, 62 M.S.P.R. 648, 652 (1994) (the probative value of hearsay depends on the particular circumstances of a case). We disagree with this conclusion, for four principal reasons.

First, Brown did not testify at the hearing. The appellant had requested Brown as a witness, and the administrative judge had ordered the agency to ensure his attendance at the hearing. See IAF ('0740), Tab 12 at 2. An agency must make an employee available to testify at a Board hearing when ordered by the administrative judge to do so; employees "will be in official duty status" while testifying. 5 C.F.R. § 1201.33. At the hearing, the agency representative stated that Brown was "out of town" and on leave, and would not be available to testify. HT 2A-2B. [She did not say why the agency did not ensure that Brown was in town and not on leave.] The agency failed to show good cause for not meeting its obligation to ensure Brown's attendance at the hearing detracts from the probative weight of Shirley's hearsay testimony about what Brown told her. Bf. Womack v. U.S. Postal Service, 70 M.S.P.R. 285, 292-93 (the agency's failure to explain why it did not call a witness, Ingram, at the hearing detracted from the probative weight to be given another employee's hearsay testimony about what Ingram supposedly said), aff'd, 99 F.3d 1160 (Fed. Cir. 1996)(Table).

To the contrary, the appellant is entitled to an inference in her favor due to the agency's failure to show good cause for Brown's unavailability. Under 5 C.F.R. § 1201.43 (a) (1), when a party does not comply with an administrative judge's order to provide information to the opposing party, the administrative

judge may impose the sanction of drawing an inference in favor of the party requesting the information. In Worrell v. Department of the Treasury, , (1985), the Board raised but found it unnecessary to resolve the question of whether an administrative judge may, by analogy to draw an inference in favor of the appellant when the agency fails to comply with an order to make a witness available to testify.

Without establishing any blanket rule concerning the issue raised in Worrel, we hold that, in this particular case, the administrative judge should have inferred that Brown's testimony would have supported the appellant's version of events. Brown and the appellant are the only witnesses with firsthand knowledge of whether the appellant threatened to shoot Bradfield, and the appellant's summary of Brown's anticipated testimony in her prehearing submission makes plain that she expected Brown would not support the agency's version of events. See IAF ('0740), Tab 12 at 2. In order to serve the ends of justice, 5 C.F.R. § 1201.43 (a) (1), we find that the agency's failure to show good cause for not making Brown available results in an inference that Brown's testimony would have been favorable to the appellant. Cf. Askew v. Department of Transportation, , 707-08 (1983) (where the agency presented a prima facie case in support of its charge, the administrative judge was permitted to draw an adverse in inference from the appellant's decision not testify in rebuttal); accord Book v. U.S. Postal Service, 6 M.S.P.R. 378, 380-81 (1981), aff'd, 675 F.2d 158 (8th Cir. 1982).

Second, contrary to the initial decision, [2] see IAF ('0740), Tab 14 at 8, Brown's handwritten note is not strong evidence corroborating Shirley's testimony. The note provides:

1-16-96

On 12 of Dec 96 Miss Roccine, stated to me Clyde Brown that if something happen to Briggite, that was going to shoot Mr. Bradfield.

Clyde R. Brown

IAF ('0740), Tab 13, Ex. 1. The note itself is unsworn hearsay, and unclear hearsay at that. See Scott v. Department of Justice, 69 M.S.P.R. 211, 229 (1995) (imprecision detracts from the probative value to be given hearsay evidence), aff'd, 99 F.3d 1160 (Fed. Cir. 1996) (Table). The note, dated January 16, 1996 as if it had already taken place. Even assuming that the note was intended to refer to Brown's conversation with the appellant on January 12, 1996, the note is ambiguous as to who "was going to shoot Mr. Bradfield." Plainly Brown left out at least one word between "that" and "was," and we have no way of knowing whether the missing word or words should have been "Roccine" (the appellant), "Brigitte" (the appellant's daughter), or someone.

Else altogether. Particularly in light of the fact that the agency did not ensure Brown's attendance at the hearing, where he could have been questioned under oath about the note, we find that it was error for the administrative judge to have found such a note corroborating evidence for Shirley's testimony. Third, Shirley was interviewed by a Postal Inspector on January 19, 1996 and gave a detailed account of the events of January 12. Shirley's statement to the Postal Inspector makes no mention of Brown's alleged statement to her that the appellant had threatened

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[2] In the initial decision, the administrative judge expressly referred to Brown's note as "evidence presented by the agency," IAF ('740), Tab 15 at 8, even though he had previously precluded the agency from introducing further evidence.

Bradfield. See IAF ('0267), Tab 11 (Ex. K to Investigative Memorandum). In other words, Shirley's own statement to an investigator just five days after the day in question provides no corroboration for her testimony at the hearing. Cf. Womack, 70 M.S.P.R. at 292 (the extent of corroborating evidence in the record is a factor to consider in assessing the probative weight of hearsay).

Fourth, as noted above, Shirley's hearsay testimony is contradicted by the appellant's live, direct testimony. See Womack, 70 M.S.P.R. at 292 (live, direct testimony. See cross-examination that contradicts hearsay detracts from the probative weight to be given the hearsay). In this connection, we note that the appellant's testimony is fully consistent with the statement she gave to the Postal Inspector. See IAF ('0267), Tab 11 (Ex. B to Investigative Memorandum).

In light of the factors discussed above, Shirley's hearsay testimony about what Brown supposedly said does not outweigh the appellant's direct testimony under oath in which she denied threatening Bradfield. We find that the agency failed to carry its burden of proving that the appellant said that she would shoot Bradfield if anything happened to her daughter. Accordingly, the agency did not prove either that the appellant engaged in "Conduct Unbecoming a Postal Employee" or that she "Threaten[ed] Harm to Postal Employees."

The appellant's removal is REVERSED.

The appellant's remaining arguments either need not be reached or do not demonstrate error by the administrative judge.

We have already held that the appellant's removal must be reversed because the agency did not prove its charge, so we need not reach her argument that the agency committed harmful procedural error when it removed her. Furthermore,

The administrative judge reversed the appellant's suspension, and ordered the agency to cancel that action. Accordingly, we need not address the appellant's arguments concerning the administrative judge's findings and conclusions in the suspension appeal. We have already held that the appellant's removal must be reversed because the agency did not prove its charge, so we need not reach her argument that the agency committed harmful procedural error when it removed her.

Furthermore, because the administrative judge upheld the appellant's removal, he was correct not to order interim relief. Additionally, the appellant's contention on review that the agency discriminated against her based on race and sex is a pro forma assertion; she has no shown that the administrative judge made any error with respect her discrimination claims. Finally, the appellant does not contest the administrative judge's findings on her reprisal claim, and we discern no reason to reopen the appeal to examine those findings.

ORDER

The portion of the initial decision that affirmed the appellant's removal is REVERSED; the remaining portions of the initial decision are AFFIRMED.

We ORDER the agency to cancel the appellant's suspension effective January 13, 1996, to cancel her removal, and to restore her effective June 14, 1996. See Kerr v. National Endowment for the Arts, 726 F.2d 730 (Fed. Cir. 1984). The agency must accomplish these with an administrative judge's order to provide actions within 20 days of the date of this decision.

We also ORDER the agency to issue a check to the appellant for the appropriate amount of back pay,

interest on back pay, and other benefits under Postal Service regulations, no later than 60 calendar days after the date of this decision. We ORDER the appellant to cooperate in good faith in the agency's efforts to compute the amount of back pay, interest, and benefits due, and to provide all necessary dispute about the amount of back pay, interest due, and/or other benefits, we ORDER the agency to issue a check to the appellant for the undisputed amount no later than 60 calendar days after the date of this decision.

We further ORDER the agency to inform the writing of all actions taken to comply with the Board's Order and of the date on which the agency believes it has fully complied. If not notified, the appellant should ask the agency about its efforts to comply. Within 30 days of the agency's notification of compliance, the appellant may file a petition for enforcement with the regional office to resolve any disputed compliance issue or issues. The petition should contain specific reasons why the appellant believes that there is insufficient compliance, and should include the dates and results of any communicate with the agency about compliance. This is the final order of the Merit Systems Protection Board in this appeal. 5 C.F.R. § 1201.113 (c).

NOTICE TO THE APPELIANT REGARDING FURTHER REVIEW RIGHTS, You have the right to request further review of the Board's final decision in your appeal.

Discrimination Claims: Administrative Review

You may request the Equal Employment Opportunity Commission (EEOC) to review the Board's final decision on your discrimination claims. See 5 U.S.C. § 7702 (b) (1). You must submit your request to the EEOC at the following address:

Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 19848
Washington, DC 20036

You should submit your request to the EEOC no 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7702 (b) (1)

Discrimination and Other Claims: Judicial Action

If you do not request review of this order on your discrimination claims by the EEOC, you may file a civil action against the agency on both your discrimination claims and your other claims and your other claims in an appropriate United States district court. See 5 U.S.C. § 7702 (b) (2). You should file your civil action with the district court no later than 30 calendar days after receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7702 (b) (2). If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a handicapping condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. See 42 U.S.C. § 2000e5 (f); 29 5 U.S.C. § 794a.

Other Claims: Judicial Review

If you choose not to seek review of the Board's decision your discrimination claims, you may request the United States Court of Appeals for the Federal Circuit to review the Board's final decision on other issues in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703 (b) (1). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. U.S.C. § 7703 (b) (1).

FOR THE BOARD:

/S/ Robert E. Taylor
Clerk of the Board

Washington, D.C.